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KERAJAAN NEGERI SELANGOR v. SURUHANJAYA PILIHAN RAYA MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AZIZUL AZMI ADNAN J
[JUDICIAL REVIEW NO: WA-25-186-10-2016]
B 26 JULY 2017

CIVIL PROCEDURE: *Injunction – Application for – Injunction to restrain Election Commission from conducting local enquiry pending final disposal of judicial review and from submitting report to Prime Minister – Whether relief* C *prayed for premature since there was no report yet – Whether abuse of court process since applicant obtained stay order for Selangor – Whether in contravention of O. 53 of Rules of Court 2012 – Whether injunction ought to be granted*

ELECTION: *Election Commission – Review of constituencies – Election Commission published second notice but did not include proposed recommendations* D *on Selangor – Application for injunction to restrain Election Commission from conducting local enquiry and from submitting report to Prime Minister – Whether relief prayed for premature since there was no report yet – Whether abuse of court process since applicant obtained stay order for Selangor – Whether in contravention of O. 53 of Rules of Court 2012 – Whether injunction ought to be granted*

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The first respondent, the Election Commission ('the EC'), had published a notice of its review of the proposed recommendations for the division of the Federal State constituencies in Selangor. The State Government of Selangor ('the applicant') applied for judicial review to challenge the proposed recommendations and leave was granted. Before the hearing of the F substantive application, the applicant applied for discovery against the respondents and this was allowed in part. The parties appealed against this decision and recorded a stay of the substantive hearing. Resulting from this stay order, the EC was only able to complete the first round of local enquiries for all the other States in Peninsular Malaysia, apart from Selangor. The EC G published its second notice but did not include its proposed recommendations on Selangor. The applicant made the application for injunctions ('encl. 44') and by the time of the hearing of the application, the EC had completed the second round of local enquiries for all the States in Peninsular Malaysia, except for Selangor. By way of encl. 44, the applicant H sought injunctions restraining the EC (i) and its Chairman and secretary, the second and third respondents respectively, from conducting any local enquiry pursuant to the second notice until the final disposal of the application for judicial review ('prayer 1'); and (ii) from submitting its report to the Prime Minister. According to the applicant, all the States in Peninsular I Malaysia comprised a single unit of review referred to in the Federal Constitution ('the FC') as the 'States of Malaya'. Therefore, it was not open

to the EC to have issued a second notice that excluded its recommendations in respect of the electoral boundaries for Selangor as Selangor formed an integral part of the States of Malaya. The applicant further submitted that s. 8 of the Thirteenth Schedule to the FC required the EC to first complete all the local enquiries in each State comprised in the States of Malaya before it may submit the report to the Prime Minister. The respondents argued that an injunction ought not to be granted as (i) the relief prayed for was premature since there was no report yet; (ii) the applicant had obtained a stay order in respect of Selangor and therefore, it was an abuse of process to seek injunction for the other States of Malaya; and (iii) the reliefs sought were in contravention with O. 53 of the Rules of Court 2012 ('the ROC') as the second notice was not raised in the judicial review.

Held (allowing encl. 44):

(1) The court may grant an injunction for as long as the application arose out of or incidental to the other relief sought in the substantive application. If the second notice was ruled as having been issued contrary to the procedures prescribed under and pursuant to the FC, an injunction would lie to restrain the EC from taking further steps. In any event, this issue did not arise because the court was not asked to rule on the constitutionality of the second notice. (paras 29 & 30)

(2) There should not be any dispute that, in the unlikely event that the EC proceeds to submit its final report without having first completed the local enquiries for the State of Selangor, such act would be *ultra vires* the FC and therefore would be subject to judicial intervention. An injunction ought to be granted, even in the absence of any such report being submitted, because (i) the EC had previously taken the position that it would be *functus officio* after submitting the report; and (ii) the principle that the intensity of review in a public law case would depend on the subject matter at hand. The challenge by the State of Selangor in this case related to the fundamental and constitutionally-guaranteed right to free and fair election which would justify the exercise of the court's discretion in favour of granting the injunction. (para 37)

(3) In order to determine the application in prayer 1, it would be necessary to rule on the constitutionality of the second notice. Since the applicant did not wish to proceed with its application for relief in prayer 1, there was no ruling on the constitutionality of the second notice. (paras 41 & 42)

Case(s) referred to:

Ahmad Bahrom Datuk Hj Abu Bakar Titingan v. Tan Sri Hj Mohd Sunoh Marso & Ors; Saman Gulam v. Tan Sri Haji Mohd Sunoh Marso [1985] 1 LNS 3 SC ***(refd)***

Election Commission, Malaysia v. Abdul Fatah Haron [1987] 2 CLJ 193; [1987] CLJ (Rep) 92 SC ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor Abdullah & Ors [1995] 1 CLJ 293 CA ***(refd)***

TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd [1985] 1 CLJ 72; [1985] CLJ (Rep) 312 FC ***(refd)***

Legislation referred to:
Federal Constitution, art. 113(2), (6), Thirteenth Schedule, ss. 2, 4, 8
Rules of Court 2012, O. 29 r. 1(1), O. 53

For the applicant - Cyrus Das, Ambiga Sreenevasan, Derek Fernandez, Latheefa Koya & Lim Wei Jiet; M/s Daim & Gamany

For the respondents - Shamsul Bolhassan, Azizan Md Arshad & Nik Azrin Zairin Nik Abdullah; SFCs

Reported by Najib Tamby

JUDGMENT
(encl. 44)

Azizul Azmi Adnan J:

Introduction

[1] These are the grounds for a decision of this court to allow an injunction against the Election Commission from submitting its final report regarding its exercise to re-delineate the election constituency boundaries for Peninsular Malaysia to the Prime Minister.

Background

[2] The following material background facts provide the context within which the application for injunctions was made.

[3] The applicant, the State Government of Selangor, commenced a judicial review application to challenge the proposed recommendations of the Election Commission in connection with its review of the division of the Federal and State constituencies in Selangor. The first respondent in this case is the Election Commission. The second and third respondents are its Chairman and secretary respectively.

[4] The State of Selangor challenges the proposed recommendations on various grounds. These include the contentions that the recommendations are unconstitutional for their failure to adhere to the principles enunciated in s. 2 of the Thirteenth Schedule to the Federal Constitution, and that the Election Commission had relied upon a defective electoral roll in coming up with the proposed recommendations.

[5] On 15 September 2016, the Election Commission had published a notice entitled "Notice of proposed recommendations for the Federal and State Constituencies in the States of Malaya as reviewed by the Election Commission in 2016".

[6] Under art. 113(2) of the Federal Constitution, the Commission has the power and obligation to undertake a review of the boundaries of the Federal and State constituencies at intervals of no less than eight years. Once it commences a review, the review must be completed within two years. Section 4 of the Thirteenth Schedule to the Federal Constitution requires the effect of any proposed recommendation arising from such review to be set out in a notice. The 15 September 2016 notice was one such notice.

[7] Once the notice is published, the provisions of the Thirteenth Schedule permit certain persons to object to any proposed alteration to a constituency boundary. These persons include any Government of any of the States of the Federation. Upon receiving representations from persons who are entitled to object, the Election Commission must hold a local enquiry in respect of each of the affected constituencies.

[8] The Election Commission may revise its recommendations after holding the local enquiries. If it does so, it must publish a second notice setting out the effect of its proposed (and revised) recommendations.

[9] Thereafter, the Commission must submit a report to the Prime Minister setting out its recommendation on the division of the electoral boundaries, pursuant to the provisions of s. 8 of the Thirteenth Schedule.

[10] In the present case, the application for leave to commence the judicial review proceedings was not opposed by the Attorney General's Chambers. Leave was granted on 16 December 2016. Shortly before the hearing of the substantive application for judicial review on 20 January 2017, the applicant applied for discovery against the respondents, which this court had allowed in part[1]. The applicant and the respondents have appealed against this decision. Pending the disposal of the appeals[2], the parties had, by agreement, recorded a stay of the substantive hearing[3].

[11] As result of this stay order, the Election Commission was only able to complete the first round of local enquiries for all the other States in Peninsular Malaysia apart from Selangor[4].

[12] The Commission published its second notice on 8 March 2017, which did not include its proposed recommendations on the State of Selangor.

[13] The State of Selangor made the application for the injunctions in encl. 44 on 25 April 2017. By the time of the hearing of the application on 5 July 2017, the Election Commission had completed the second round of local enquiries for all the States in Peninsular Malaysia, except for Selangor and Malacca. In separate proceedings, the High Court had ordered the stay of local enquiries in Malacca on 12 May 2017.

[14] It was therefore common ground that, as at the date of the hearing of the application in encl. 44 on 5 July 2017:

A (a) the first round of local enquiries for Selangor had not yet completed, due to the stay order that had been recorded by agreement of the parties;

(b) the Election Commission had proceeded to publish its revised proposed recommendations in a second notice, which recommendations excluded from its scope the State of Selangor; and

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(c) the second round of local enquiries for Malacca had not been completed, due to the stay order of 12 May 2017.

The Application For Injunctions Against The Election Commission

C **[15]** In its application in encl. 44, the State of Selangor sought for orders that may be summarised into the following:

(a) an injunction restraining the respondents from conducting any local enquiry pursuant to the second notice of 8 March 2017 until the final disposal of the application for judicial review; and

D (b) an injunction restraining the Election Commission from submitting its report to the Prime Minister pursuant to s. 8 of the Thirteenth Schedule.

[16] The main thrust of the arguments advanced by Dato' Dr Das, lead counsel for the State of Selangor, in support of the prayer in sub-para. (a) above was that all the States in Peninsular Malaysia comprised a single unit E of review, which is referred to in the Federal Constitution as the "States of Malaya". Accordingly, it was not open to the Election Commission – argued counsel – to have issued a second notice that excluded its recommendations in respect of the electoral boundaries for Selangor, as Selangor formed an integral part of the States of Malaya. The Constitution provided no facility F by which a third notice, dealing exclusively with Selangor, may be issued.

[17] In order to make a determination on whether or not an injunction lay against the respondents on these grounds, it would have been necessary for me to have made a determination on the constitutionality of the second notice issued on 8 March 2017. As events unfolded, I was not required to G make a ruling on this point, for reasons that will shortly be explained.

[18] The application was determined on the sole issue of the proper construction of s. 8 of the Thirteenth Schedule.

Analysis And Decision

H *The Proper Construction Of s. 8 Of The Thirteenth Schedule*

[19] In his submissions, Dato' Dr Das relied in part upon the provisions of s. 8 of the Thirteenth Schedule to the Federal Constitution, which provides:

I 8. The Election Commission shall, having completed the procedure prescribed by this Part, submit to the Prime Minister a report on constituencies showing:

(a) the constituencies into which they recommend that each unit of review should be divided in order to give effect to the principles set out in section 2; and

(b) the names by which they recommend that those constituencies shall be known,

or stating that in their opinion no alteration is required to be made in order to give effect to the said principles.

[20] The phrase "procedures prescribed by this Part" refers to Part II of the Thirteenth Schedule, which sets out the procedure to be adhered to for the delimitation of constituencies. These procedures have been outlined at paras. 6 to 9, *ante*.

[21] Dato' Dr Das submitted (and I agree) that, having regard to art. 113(6) of the Federal Constitution, there are three "units of review" in the Federation:

(a) the States of Malaya, which, as explained earlier, are the States in what is colloquially known as Peninsular Malaysia, namely Johore, Kedah, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territories of Kuala Lumpur, Labuan and Putrajaya;

(b) Sabah; and

(c) Sarawak.

[22] Article 113(6) provides that there must be separate electoral boundary reviews for each unit of review:

(6) There shall be separate reviews under Clause (2) for the States of Malaya and for each of the States of Sabah and Sarawak, and for the purposes of this Part the expression "unit of review" shall mean, for federal constituencies, the area under review and, for State constituencies, the State and the expression "States of Malaya" shall include the Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

[23] Accordingly, it was advanced by the applicant that s. 8 of the Thirteenth Schedule requires the Election Commission to first complete all the local enquiries in each State comprised in the States of Malaya before it may submit the report on the electoral boundaries for the States of Malaya to the Prime Minister. In other words, because the local enquiries for Selangor and Malacca have not yet completed, the Election Commission would not be permitted to deliver to the Prime Minister its final report on its recommended electoral boundaries.

[24] Learned Senior Federal Counsel acting for the respondents did not disagree with the position put forward by counsel for the State of Selangor as regards the interpretation of s. 8 of the Thirteenth Schedule to the Federal Constitution. In the course of submissions, the court was able to establish that learned counsel for the respondents was of the view that:

A (a) there may only be one report to the Prime Minister in respect of the States of Malaya for each delimitation exercise;

(b) that report can only be issued to the Prime Minister once the review of all the constituency boundaries for the whole of the States of Malaya has been completed; and

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(c) no report can be given to the Prime Minister which excluded the recommendations pertaining to the State of Selangor.

[25] There being no disagreement on the substantive points of law, Dato' Dr Das inquired from learned SFC – quite reasonably in my view – whether C they would be in a position to provide an undertaking to the State of Selangor that the Election Commission would not submit the final report to the Prime Minister before the completion of the local enquiries. However, learned SFCs were not in a position to give the undertaking that the Election Commission would not issue a report in contravention of this agreed legal D position. As a consequence, the court was constrained to make a determination on the merits of the application.

The Submissions Of The Respondents

[26] Despite the fact that En Shamsul Bolhassan SFC, did not disagree with E the position that the Election Commission would not be entitled to submit its final report to the Prime Minister unless all the local enquiries were completed, he was nonetheless of the view that an injunction ought not be granted by the court. In his written submissions, three reasons were advanced as to why the court ought to dismiss prayer 2 of the application seeking for an injunction against the Commission from submitting its final report to the F Prime Minister. I reproduce these three arguments below *verbatim*:

> 8. It is submitted that the relief prayed for is premature as there is no report yet in respect of the unit of review for the state of Malaya. It must be noted there has to be one (1) report for the state of Malaya in which there is none at the moment as the local enquiries G for the states of Selangor (1st and 2nd local enquiry) and Melaka (2nd local enquiry) has not been conducted.
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> 9. It is also submitted that the Applicant in this judicial review application has obtained a stay order in respect of Selangor and therefore the application is an abuse of process for the Applicant to H seek injunction for other states of Malaya.
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> 10. It is further submitted that the reliefs prayed for in this application is without merit and an abuse of the court's process in contravention with Order 53 ROC 2012 as the prayers sought for here in particular the 2nd notice for here is not an issue in the judicial review and not in compliance with Order 53 ROC 2012. I

[27] The first contention that the relief prayed for is premature is a well-rehearsed argument. The fact remains that, had a report been submitted for the States of Malaya to the Prime Minister, the argument would have been put forth that judicial review cannot lie in circumstances where the Election Commission has exhausted its functions and has no further role to play by the fact that the report would be, at that stage, within the sole jurisdiction of the Prime Minister and the House of Representatives.

[28] The second argument was that the applicant had already obtained a stay order, and therefore it was an abuse of process for an injunction to be sought for the remaining States in the States of Malaya. The first observation that may be made is that the stay had in fact been recorded by agreement of the parties. Secondly and more importantly, SFCs did not disagree that the States of Malaya formed a single unit of review, and it would follow therefore that it would not be possible for the review to have been completed without first completing the local enquiries for Selangor. Accordingly, the injunction would have caused no particular hardship to the Election Commission, if it followed the advice of its own legal advisers. On the other hand, an injunction would have provided assurance to the State of Selangor that the Commission would not act in a manner contrary to the agreed legal position.

[29] The third objection was that the reliefs sought was in contravention of O. 53 of the Rules of Court 2012, in particular, because the second notice was not raised as an issue in the substantive judicial review application. In my view, while it is true that the second notice had not been made the subject of the review application, that is only so because at the time the review application was commenced, the second notice had not yet been issued. In my judgment, if the second notice was ruled as having been issued contrary to the procedures prescribed under and pursuant to the Federal Constitution, an injunction would lie to restrain the Commission from taking further steps. In any event, this issue does not arise, simply because the court was not asked to rule on the constitutionality of the second notice, as we shall see later.

[30] Furthermore, I am of the view that the court may grant an injunction for as long as the application arises out of or is incidental to the other relief sought in the substantive application: see O. 29 r. 1(1) of the Rules of Court 2012 and the decision of the Federal Court in *TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd*[5].

Can An Injunction Be Granted Against The Election Commission?

[31] Learned SFCs did not, whether in their written submissions or at the oral hearing, seek to argue that an injunction did not lie against the Election Commission in the performance of its constitutional functions under the law. The authority often cited and relied upon for this proposition is the Supreme Court case of *Election Commission, Malaysia v. Abdul Fatah Haron*[6]. The facts of this case were as follows.

[32] The respondent in that case lost the election in the State constituency of Bukit Tuku held on 3 August 1986. He filed an election petition in the High Court, challenging the validity of the election of the other candidate, Zakaria bin Botok. Unfortunately, before the election petition was heard, Zakaria passed away.

[33] The chairman of the Election Commission announced that nomination for the Bukit Tuku by-election as a result of Zakaria's death would be held on 18 April 1987, and that if there was a contest, polling would be held on 27 April 1987. The respondent applied for, and obtained, an *ex parte* interim injunction to restrain the Election Commission from calling for nominations on 18 April 1987 before finalisation of the election petition. The Commission unsuccessfully applied to the High Court to discharge the interim injunction and thereafter appealed. The Supreme Court allowed the appeal. I reproduce the judgment of the court *in extenso*, as it establishes a number of important principles:

> It was submitted on behalf of the appellant that there was no jurisdiction for the Court to entertain the application of the respondent because the Election Commission was exercising its constitutional functions under Part VIII of the Federal Constitution relating to conduct of elections. It was also submitted that this Court had decided the same in previous appeals – SCCA No. 358 of 1985, SCCA No. 359 of 1985 and SCCA No. 360 of 1985[7]. The three appeals originated from three summons-in-chambers consolidated asking for a number of orders including one that sought for an injunction to restrain the Election Commission and their servants, agents or otherwise from issuing a writ of by-election and holding, conducting or continuing with any by-election in a constituency in the State of Sabah. All the applications were dismissed by the learned Judge and this Court dismissed the appeals on 7 November 1985. In its oral judgment this Court recognises two important aspects of the matter before it then. Firstly, it recognises that the relief sought in the Court below was discretionary. Because it was an exercise of discretion the appellate Court leans against interfering with the decision of the lower Court unless it can be shown that the Judge had exercised his discretion on wrong principles of law. Secondly, it recognises the constitutional functions of the Election Commission which are clearly set out in Art. 113 of the Federal Constitution to conduct elections to the House of Representatives and the legislative assemblies of the States.
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> It is not that the Court has no jurisdiction to hear an application of this nature but that the Court must bear in mind that the Election Commission was performing its constitutional functions under the law. The election process is prescribed in the Constitution. The Election Commission is given a vital role in this democratic process. The Constitution also provides that any matter which has the effect of vitiating an election should be brought up before an appropriate forum. Article 118 of the Federal Constitution reads:

> No election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.

Section 33(1) of the Election Offences Act 1954 states:

> Every election petition shall be tried by the Chief Justice or by a Judge of any High Court nominated by the Chief Justice for the purpose:
>
> Provided that the Chief Justice shall not nominate a Judge of a High Court of which he is not Chief Justice without consulting the Chief Justice of that High Court.

Any dissatisfaction with or challenge to an election should be brought up by way of an election petition before an election Judge and nowhere else.

The law has also prescribed the period during which a by-election should be held. Article XLVI(5) of the constitution of the state of Kelantan requires that a casual vacancy shall be filled within sixty days from the date on which it occurs. Therefore it is a clear intention of the legislature that the by-election should be concluded according to the time frame prescribed. Any controversial matter arising out of the election should be brought up only after the election is over so that the election proceeding may not be unduly hampered or protracted. If a person is dissatisfied with the election he should bring his complaint before an election Judge by way of an election petition. Such complaint should not be made an issue before any Court while the election is in progress. Therefore it is not a question of the Court having no jurisdiction but that the Court should decline to exercise its jurisdiction so as not to hinder the democratic process.

[34] From these passages, a number of important principles arise:

(a) the first is that the court does not lack jurisdiction to hear an application for an injunction or to grant such injunction against the Election Commission or other statutory authority or body exercising a constitutional function under the law. The issue is not one of want of jurisdiction, but rather of the proper exercise of judicial discretion;

(b) the second is that, the proper exercise of judicial discretion would be to decline an injunction where to do so would hinder the proper exercise by the statutory authority or body of its constitutional functions under the law. Nonetheless, it is axiomatic that such functions must be exercised for a proper purpose. The powers of any authority or body cannot be exercised unlawfully, in excess or in the absence of jurisdiction, or unreasonably, in which case the actions of the authority or body would be liable to curial intervention;

(c) third, the proper exercise of judicial discretion would also be to decline intervention where to do so would hinder the democratic process. Thus, where the law already provides for a means of legal redress, such as an election petition to the High Court, that procedure must be followed, for to do otherwise would be contrary to the intent of the Legislature; and

(d) finally, in matters concerning of the exercise of judicial discretion, an appellate court would lean against interfering with the decision of the lower court unless it can be shown that the judge had exercised his discretion on wrong principles of law.

[35] It will be seen that the case of *Election Commission, Malaysia v. Abdul Fatah Haron* does not establish a blanket proposition that injunction does not lie against the Election Commission. In fact, quite the contrary, it provides the authority that the court does indeed have jurisdiction to grant an injunction in an appropriate case. Accordingly, the earlier cases reported as *Ahmad Bahrom Datuk Hj Abu Bakar Titingan v. Tan Sri Hj Mohd Sunoh Marso & Ors; Saman Gulam v. Tan Sri Haji Mohd Sunoh Marso*[8] ought to be read in the light of the judgment in *Election Commission, Malaysia v. Abdul Fatah Haron.*

[36] On the facts of this particular case, SFCs are in agreement with counsel for the State of Selangor that (i) there may only be one report that may be submitted to the Prime Minister in respect of the States of Malaya for the delimitation exercise, that (ii) this report can only be issued to the Prime Minister once the review of all the constituency boundaries for the whole of the States of Malaya has been completed, and that (iii) the Commission would not be entitled to submit a report to the Prime Minister that excluded the recommendations pertaining to the State of Selangor. I would hasten to add that the court also rings its endorsement on these legal conclusions.

[37] Accordingly, there should not be any dispute that, in the unlikely event that the Election Commission proceeds to submit its final report without having first completed the local enquiries for the State of Selangor, such act would be *ultra vires* the Federal Constitution and therefore would be subject to judicial intervention. Now, as to why an injunction ought to be granted even in the absence of any such report having been submitted, this is because the Election Commission has previously taken the position (explained at para. 27 *ante*), that it would be *functus officio* after having submitted the report. The second reason is the principle that the intensity of review in a public law case will depend on the subject matter at hand. The challenge by the State of Selangor in the present instance relates to the fundamental and constitutionally-guaranteed right to free and fair election, which in my respectful view would justify the exercise of this court's discretion in favour of granting the injunction.

The Keet Gerald Inquiries

[38] The Court of Appeal in *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah*[9] provided guidance to trial judges for the determination of an application for interlocutory injunction. I am to undertake three stages of inquiry, which I address below:

(a) the question of whether there exists a *bona fide* issue in dispute does not arise, as the respondents do not dispute the applicant's interpretation of the provisions of s. 8 of the Thirteenth Schedule to the Federal Constitution;

(b) the justice of the case lay with the applicant, because, as explained at para. 27 *ante*, it may be precluded from relief in the substantive judicial review application should the Election Commission proceed to submit its final report of its recommendations on the electoral boundaries. In my view, the fact that an injunction would be extant against the Commission when the Constitution provides for a period of two years for the Commission to complete its review (which I view as having been commenced on the publication of the first notice on 15 September 2016) does not materially hamper the Commission in carrying out its constitutional duties within the stipulated time-frame in a way that would outweigh the potential prejudice that may be occasioned to the applicant. Even in the unlikely event that the courts do not finally dispose of the appeals on the substantive judicial review application in a way as to allow the Commission to meet its two-year deadline, no blame can laid on the members of the Commission for having complied with an order of court. It is important not to lose sight of the substantive issue in the judicial review application, which is the adherence to the principles set out in Part I of the Thirteenth Schedule. The public interest that will be served in ensuring that these principles are upheld will outweigh any clog on the functions of the Election Commission caused by the interim injunction; and

(c) finally, as to whether the judicial discretion ought to be exercised in favour of allowing or refusing the application for interim injunction: in my view, an injunction will serve to preserve the *status quo* until the substantive judicial review challenge is adjudicated on its merits. This would be the just result for the interim period.

[39] For these reasons, I granted order in the terms of prayer 2 of the application in encl. 44.

A **The Second Notice**

[40] Having heard submissions on the parties' respective positions as regards s. 8 of the Thirteenth Schedule, I was of the view that the court would have been entitled to grant the relief prayed for in prayer 2 of the application. The question was then put to the applicant whether it wished to pursue the
B application in prayer 1.

[41] Prayer 1, it will be recalled, sought for an injunction restraining the respondents from conducting any local enquiry pursuant to the second notice of 8 March 2017 until the final disposal of the application for judicial review. As of the date of hearing, the only local enquiries outstanding in respect of
C the second notice were those pertaining to Malacca. In order to have determined the application in prayer 1, it would have been necessary for me to rule on the constitutionality of the second notice. The issue would turn, in my judgment, on whether the Commission was entitled to have issued the second notice without having concluded the local enquiries in Selangor
D pursuant to the first notice and without including Selangor in its proposed recommendations in the second notice.

[42] The applicant, through counsel, informed the court that it did not wish to proceed with its application for relief in prayer 1 of the application, and hence the court did not make any ruling on the constitutionality of the second
E notice. I recorded that Dato' Dr Das reserved his client's position on this point.

[43] There was no order as to costs.

F **Endnotes:**

1. The grounds for which are reported at *Kerajaan Negeri Selangor v. Suruhanjaya Pilihan Raya Malaysia & Ors* [2017] 6 CLJ 82; [2017] 4 AMR 451.
2. The respondents' appeal was subsequently allowed by the Court of
G Appeal in its decision of 20 July 2017. The Court of Appeal also dismissed Selangor's appeal.
3. This stay was recorded on 9 March 2017, and not on 16 December 2016, as deposed by the second respondent in his affidavit in encl. 50.
4. No local enquires were conducted for Perlis, Wilayah Persekutuan
H Putrajaya and Wilayah Persekutuan Labuan.
5. [1985] 1 CLJ 72; [1985] CLJ (Rep) 312; [1985] 2 MLJ 45; [1984] 1 MLRA 521.
6. [1987] 2 CLJ 193; [1987] CLJ (Rep) 92; [1987] 2 MLJ 716; [1987]
I 1 MLRA 232.

7. These cases are reported as *Saman Gulam v. Tan Sri Haji Mohd Sunoh Marso* [1987] 2 MLJ 718; *Ahmad Bahrom bin Datuk Hj Abu Bakar Titingan v. Tan Sri Haji Mohd Sunoh Marso & Ors* [1985] 1 LNS 3; [1985] 1 MLRA 667.
8. *op. cit.* fn. 7.
9. [1995] 1 CLJ 293, at 305h; [1995] 1 AMR 373, at 390; [1995] 1 MLJ 193, at 206H; [1994] 1 MLRA 454, at 461.